

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN L. CRUISE, JR., BRIAN CONRAD,
KENNETH J. DIBBLE, MATTHEW A. EIRICH,
MICHAEL KOLOGY, PETER J. KROL,
EDGAR VELLOTTI,

Plaintiffs,

- against -

MICHAEL J. DOYLE, as General Chairman, LOCAL
DIVISION 9, LOCOMOTIVE ENGINEERS,
ASSOCIATION OF COMMUTER RAIL EMPLOYEES,
LOCAL DIVISION 9, LOCOMOTIVE ENGINEER
ASSOCIATION OF COMMUTER RAIL EMPLOYEES,
and MTA METRO-NORTH RAILROAD,

Defendants.

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: **DECLARATION OF**
: **VINCENT F. O'HARA IN**
: **SUPPORT OF DEFENDANT**
: **ACRE ON DEFENDANT**
: **ACRE AND METRO-**
: **NORTH'S JOINT**
: **MOTION TO DISMISS**

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: 07-CV-3940
: (Pauley, J)
: (Pitman, MJ)
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I, Vincent F. O'Hara, an attorney admitted to practice in this Court and the Courts
of New York State, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the
following is true and correct:

1. I am the attorney of record for the Defendants Michael F. Doyle, sued
herein as Michael J. Doyle, as General Chairman, Local Division 9, Locomotive Engineers,
Association of Commuter Rail Employees, and Local Division 9, Locomotive Engineer
Association of Commuter Rail Employees (collectively "ACRE") in this action and a partner of
the law firm of Holm & O'Hara LLP.

2. I am personally familiar with all of the facts and circumstances underlying
this action.

3. This declaration is made on personal knowledge in support of Defendant

ACRE's motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) in this action for the purpose of placing before the Court true copies of the Plaintiffs' Complaint and the collective bargaining agreement between ACRE and METRO-NORTH with amendments, which are referenced in Plaintiffs' Complaint and Defendants' Joint Motion to Dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(6) submitted herewith.

4. Attached hereto as "Exhibit A" is a true copy of the Summons and Complaint filed by John L. Cruise, Jr., Brian Conrad, Kenneth J. Dibble, Matthew A. Eirich, Michael Kology, Peter J. Krol, and Edgar Vellotti (collectively "PLAINTIFFS") on May 21, 2007 in the United States District Court for the Southern District of New York.

5. The Brotherhood of Locomotive Engineers ("BLE") and MTA Metro-North Railroad ("METRO-NORTH") are parties to a collective bargaining agreement effective January 1, 1995 through December 31, 1998 ("CBA").

6. Attached hereto as "Exhibit B" is a true copy of the CBA between defendants METRO-NORTH and ACRE.

7. The CBA is cited in paragraph "12" of the Complaint and is proper for consideration by this Court on Defendants' Joint Motion to Dismiss.

8. The BLE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 1999 through December 31, 2002, amending and extending effective date of the CBA.

9. Attached hereto as "Exhibit C" is a true copy of the Memorandum of Understanding for the period January 1, 1999 through December 31, 2002 between METRO-NORTH and ACRE.

10. ACRE is the successor representative organization to the BLE on the

Metro-North Railroad.

11. Defendants ACRE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 2003 through December 31, 2006, amending and extending effective date of the CBA.

12. Attached hereto as "Exhibit D" is a true copy of the Memorandum of Understanding for the period January 1, 2003 through December 31, 2006 between METRO-NORTH and ACRE.

13. Defendants ACRE and METRO-NORTH are parties to a Memorandum of Understanding for the period January 1, 2007 through June 15, 2010, amending and extending effective date of the CBA.

14. Attached hereto as "Exhibit E" is a true copy of the Memorandum of Understanding for the period January 1, 2007 through June 15, 2010 between METRO-NORTH and ACRE.

15. Defendants METRO-NORTH and ACRE were bound by the CBA during the period 2002 through the time of filing this action on May 21, 2007 ("relevant period") by operation of Exhibits "C" through "E."

16. As members of ACRE, PLAINTIFFS are subject to the provisions of the CBA during the relevant period by operation of Exhibits "C" through "E."

17. Based upon this Declaration and the attached Declaration of Frank Rinaldi dated October 25, 2007 with the annexed Exhibits "A" through "E," and Defendants Joint Motion to Dismiss, Defendants Michael F. Doyle, sued herein as Michael J. Doyle, as General Chairman, Local Division 9, Locomotive Engineers, Association of Commuter Rail Employees, and Local Division 9, Locomotive Engineer Association of Commuter Rail Employees respectfully request that the Complaint be dismissed as there is no evidence that Defendants breached the duty of fair representation, no allegation of a breach of the relevant CBA and a failure to file the Complaint within the relevant statute of limitations.

Dated: New York, New York

October 26, 2007

Respectfully submitted,

HOLM & O'HARA LLP
Attorneys for Defendants
Michael F. Doyle, sued herein as Michael J. Doyle, as General Chairman, Local Division 9, Locomotive Engineers, and Association of Commuter Rail Employees

By: /s/ Vincent F. O'Hara

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TO: Ira Cure, Esq.
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- against -

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: **DECLARATION OF FRANK**
: **RINALDI IN SUPPORT OF**
: **DEFENDANT ACRE ON**
: **DEFENDANT ACRE AND**
: **METRO-NORTH'S JOINT**
: **MOTION TO DISMISS**

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: 07-CV-3940
: (Pauley, J)
: (Pitman, MJ)
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I, Frank Rinaldi, an attorney admitted to practice in this Court and the Courts of New York State, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an attorney in the Office of Richard K. Bernard, Vice President and General Counsel for the Defendant Metro-North Commuter Railroad ("METRO-NORTH").
2. I am personally familiar with all of the facts and circumstances underlying this action.
3. This declaration is made on personal knowledge in support of Defendant METRO-NORTH's motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) in this action, and for the purpose of placing before the Court true copies of the Plaintiffs' Complaint and the collective bargaining agreement between ACRE and METRO-

NORTH with amendments, which are referenced in Plaintiffs' Complaint and Defendants' Joint Motion to Dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(6) submitted herewith.

4. Attached hereto as "Exhibit A" is a true copy of the Summons and Complaint filed by John L. Cruise, Jr., Brian Conrad, Kenneth J. Dibble, Matthew A. Eirich, Michael Kology, Peter J. Krol, and Edgar Vellotti (collectively "PLAINTIFFS") on May 21, 2007 in the United States District Court for the Southern District of New York.

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14. Attached hereto as "Exhibit E" is a true copy of the Memorandum of Understanding for the period January 1, 2007 through June 15, 2010 between METRO-NORTH and ACRE.

15. Defendants METRO-NORTH and ACRE were bound by the CBA during the period 2002 through the time of filing this action on May 21, 2007 ("relevant period") by operation of Exhibits "C" through "E."

16. As members of ACRE, PLAINTIFFS are subject to the provisions of the CBA during the relevant period by operation of Exhibits "C" through "E."


17. In short, Defendants' joint motion to dismiss the Complaint together with the Exhibits described herein and attached to the motion to dismiss establish that there is no evidence that Metro-North breached any provision of the collective bargaining agreement between METRO-NORTH and ACRE. Accordingly, PLAINTIFFS' complaint should be dismissed in its entirety.

18. **WHEREFORE**, Metro-North respectfully requests that the joint motion be granted in all respects and that the court issue an order dismissing the plaintiff's complaint and that the Court grant such other and further relief as is deemed just, proper and equitable.

Dated: New York, New York
October 25, 2007

Respectfully submitted,

RICHARD K. BERNARD
*Vice President and General Counsel
for Defendants Metro-North Commuter
Railroad*

By: 
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